

APPEAL NO. 031125
FILED JUNE 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2003. The hearing officer determined that the appellant's (claimant) date of maximum medical improvement (MMI) was November 16, 2001, with an 11% impairment rating (IR) as assessed by the designated doctor whose opinion was not contrary to the great weight of other medical evidence.

The claimant appealed, contending that the designated doctor had not rated the entire compensable injury and that a head injury and vertigo (dizziness) should have been rated. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. It is relatively undisputed that the claimant, a nurse's aide, sustained her injury when she bent over and was hit by a nightstand or top. The claimant had rotator cuff repair surgery on March 27, 2001. Extent of injury was not an issue and no determinations were made regarding extent of injury. At issue is whether the designated doctor should have rated, or incorrectly failed to rate, a claimed head injury and associated vertigo.

In a report dated December 20, 2001, from the carrier's required medical examination (RME) doctor, the claimant was initially certified as being at MMI on November 16, 2001, with a 5% IR, apparently on loss of range of motion of the upper left extremity using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The claimant disputed the rating and Dr. O was appointed as the Texas Workers' Compensation Commission (Commission)-designated doctor.

On a Report of Medical Evaluation (TWCC-69) and narrative dated April 26, 2002, Dr. O certified MMI on November 16, 2001, (adopting RME doctor's date of MMI) and assessed an 11% IR based on "5% diagnosis impairment per Category II" (we presume DRE cervicothoracic Category II) of the 4th edition AMA Guides and a 6% impairment for the left shoulder complaints combined for the 11% whole body IR.

Subsequently Dr. E, on referral from the treating doctor, certified MMI on July 1, 2002, with a 15% IR based on 6% impairment for the left shoulder, 5% impairment "for DRE Category II of the cervical spine" and 5% impairment from "Chapter 9, Section 9.1c, page 228-9" for vertigo combined for a 15% whole body IR.

The Commission, by letter dated October 22, 2002, wrote Dr. O forwarding reports from the treating doctor and inquiring about a rating for the claimant's head injury. Dr. O replied that he did not consider the head injury "because there appeared to be no cognitive deficits" and the headaches were the result of the cervical injury. Dr. O confirmed his earlier assessment of the 11% IR.

The hearing officer, in the discussion portion of his decision discussed the claimed vertigo at some length noting conflicting evidence whether the vertigo was permanent, or may have predated the injury or developed after the injury (due to high blood pressure). In the end, the hearing officer concluded that the great weight of other medical evidence was not contrary to the designated doctor's opinion on both the MMI date and IR.

Section 408.122(c) and 408.125(e) provide, in part, that the report of the designated doctor shall have presumptive weight and that the Commission shall base its determinations of whether the employee has reached MMI and the employee's IR on such report unless it is contrary to the great weight of the other medical evidence. *And see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)). We are satisfied that the challenged factual determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **SENTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge